

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>SHAWN T. VOGAN</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,014,475
<b>YORK INTERNATIONAL</b>	)	
Respondent	)	
AND	)	
	)	
<b>AMERICAN HOME ASSURANCE CO. and</b>	)	
<b>INSURANCE CO. OF THE STATE OF</b>	)	
<b>PENNSYLVANIA</b>	)	
Insurance Carriers	)	

**ORDER**

Respondent appeals the February 6, 2004 preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes. Claimant was awarded medical benefits with Robert P. Cusick, M.D., as the authorized treating physician and temporary total disability beginning December 5, 2003, and continuing until claimant is released to substantial gainful employment.

Respondent contends that claimant's ongoing problems with his hip are a longstanding condition, since claimant fractured his hip at the age of 12. Claimant has had metal fixation in his hip since that time. Claimant contends that his condition worsened substantially after going to work with respondent and that the work with respondent aggravated claimant's condition to the point where he is having to undergo a complete hip replacement.

**ISSUES**

- (1) Whether claimant was injured out of and in the course of his employment with respondent.
- (2) Whether claimant provided proper notice of his alleged injury.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant suffered accidental injury at the age of 12, when he fell out of a tree, breaking his left hip. His fracture was treated by operative fixation, which failed. Claimant then underwent a bone graft and repeat fixation one year later. Since that time, claimant has had difficulties with that hip, suffering a slight limp.

Claimant began working for respondent in May of 2000, with a break in employment between July of 2000 and November of 2001, when he worked construction. He then returned to work for respondent.

Claimant testified that his condition worsened during the times he worked for respondent because his job with respondent required him to be on his feet nine to ten hours a day, with substantial walking.

The Board acknowledges that claimant's long history of hip problems is significant. However, claimant's testimony, coupled with the opinion of Dr. Cusick (claimant's treating physician) that claimant's work history represents "an aggravation or exacerbation of Mr. Vogan's preexisting hip condition," is sufficient to persuade the Board that claimant has suffered an aggravation of his hip condition. Whether this aggravation proves to be temporary or permanent, or whether it was an aggravation or merely an exacerbation cannot be ascertained from the evidence presented in this record. However, for preliminary purposes, the Board finds that claimant has proven that he suffered at least a temporary aggravation of his condition sufficient to justify ongoing medical care.

Respondent also contends claimant did not provide timely notice of accident. Claimant's accidental injury date is alleged through December 5, 2003, his last day worked. Respondent acknowledges receiving notice in the form of a letter provided by claimant's attorney, which was dated December 15, 2003, and received by respondent December 17, 2003. This is within ten days of the alleged accident, as is required by statute.<sup>1</sup> The Board, therefore, finds that claimant provided timely notice of accident.

The Board finds that, for preliminary hearing purposes, claimant has proven that he suffered accidental injury arising out of and in the course of his employment and that he provided timely notice of accident.

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<sup>1</sup> K.S.A. 44-520.

As is always the case, preliminary hearing findings are not binding in a full hearing on the claim, but are instead subject to a full presentation of the facts.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes dated February 6, 2004, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2004.

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BOARD MEMBER

c: E. L. Lee Kinch, Attorney for Claimant  
Vincent A. Burnett, Attorney for Respondent  
Nelsonna Potts Barnes, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director